



# The Washington Report

**Financial Services Regulatory Insight Center**

The week ended October 13, 2017

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# 1. Safety and soundness

## 1.1 **Basel Committee lowers floor on treatment of derivative liabilities under the NSFR**

The Basel Committee on Banking Supervision (BCBS) agreed at its meeting on October 4-5, 2017 to allow national discretion for the treatment of derivative liabilities under the net stable funding ratio (NSFR) standard. Jurisdictions may lower the value of the "required stable funding" factor for derivative liabilities to as low as 5 percent in contrast to the current 20 percent requirement. The BCBS stated that it made the change to "facilitate the implementation of the NSFR."

[\[Press Statement\]](#)

## 1.2 **OCC updates list of permissible activities**

On October 13, 2017, the Office of the Comptroller of the Currency (OCC) released an updated list of permissible activities for national banks and federal savings associations. In addition to updating the list of permissible activities, the publication also streamlines certain entries, and includes applicable OCC interpretive letters and corporate decisions affecting federal savings associations.

[\[Press Statement\]](#) [\[Permissible Activities\]](#)

## 1.3 **Federal Reserve announces the U.S. Faster Payments Governance Framework Formation Team**

The Federal Reserve Board has announced the names of the 27 members of the Governance Framework Formation Team that

will develop a governance framework for faster payments in the United States. This team will initially focus on the structure, decision-making, and processes of a faster payments governance framework. It expects to seek public comment in the spring of 2018 on the recommendations it develops and to conclude its work during the second half of that year.

[\[Announcement\]](#)

## 1.4 **Quarles sworn in as Federal Reserve Board Governor**

Randal Quarles was sworn in as a member of the Board of Governors of the Federal Reserve System and as Vice Chair for Supervision on October 13, 2017. He was confirmed to both positions by the United States Senate on October 5.

Mr. Quarles has previously served in multiple positions at the Department of the Treasury, including as the Under Secretary of the Treasury for Domestic Finance and Assistant Secretary of the Treasury for International Affairs, in addition to serving as the U.S. Executive Director of the International Monetary Fund.

[\[Press Statement\]](#)

# 2. Enterprise and consumer compliance

## 2.1 **OCC issues policy guidance for CRA violations**

The Office of the Comptroller of the Currency (OCC) released Bulletin 2017-40 to publicly distribute Policies and Procedures Manual 5000-43, which sets out the OCC's policy and framework for determining the effect of evidence of discriminatory or other illegal credit practices on the Community Reinvestment Act (CRA) rating of national banks, federal savings associations or federal branches.

[\[Bulletin 2017-40\]](#)

## 2.2 **FTC announces coordinated federal-state initiative targeting student debt relief scams**

The Federal Trade Commission (FTC) announced that it has partnered with eleven states and the District of Columbia in "Operation Game of Loans," a coordinated federal-state law enforcement initiative targeting deceptive student loan debt relief scams. A total of 36 actions taken by the FTC and the state attorneys general were made as part of the initiative against multiple companies and individuals alleged to have used deception and false promises of relief to take more than \$95 million in illegal upfront fees from consumers.

[\[FTC Announcement\]](#)

# 3. Capital markets and investment management

## 3.1 CFTC chair testifies before House Agriculture Committee

On October 13, 2017, Commodity Futures Trading Commission (CFTC) Chairman Christopher Giancarlo announced that the CFTC and the European Commission (EC) had made comparability and equivalence determinations on margin requirements for uncleared swaps and developed a common approach regarding CFTC and European Union (EU) authorized derivatives trading venues.

Comparability determination: CFTC Commissioners unanimously approved a determination finding the margin requirements for uncleared swaps under EU laws and regulations comparable in outcome to those under the Commodity Exchange Act and CFTC regulations. Effective immediately, a swap dealer or major swap participant subject to the both the CFTC's and EU's margin rules for uncleared swaps may rely on substituted compliance wherever available under the CFTC's margin rules. This means that a swap dealer or major swap participant that complies with EU margin rules would be deemed to be in compliance with the CFTC's margin rules while remaining subject to the CFTC's examination and enforcement authority. The EC recently announced its finding that the CFTC's uncleared swap margin rules are comparable in outcome to the EU's corresponding margin requirements for uncleared over-the-counter (OTC) derivatives.

Common approach to derivatives trading venues: Giancarlo and Valdis Dombrovskis, the European Commission Vice President for Financial Stability, Financial Services and Capital Markets Union, also announced a common approach to certain CFTC and EU authorized derivatives trading venues. Dombrovskis will propose that the EC adopt an equivalence decision covering CFTC-authorized swap execution facilities (SEF) and designated contract markets (DCM), provided that these institutions meet the requirements of the Markets in Financial Instruments Regulation (MiFIR), the Markets in Financial Instruments Directive (MiFID II), and the Market Abuse Regulation (MAR). Giancarlo will also support a CFTC exemption from SEF registration of the trading venues authorized in accordance with the MiFID II/MiFIR requirements that have been identified to the CFTC by the EC, provided that they satisfy the standard set forth in CEA Section 5h(g).

[Press Statement]

## 3.2 CFTC chair testifies before House Agriculture Committee

Chairman of the Commodity Futures Trading Commission (CFTC) Christopher Giancarlo testified before the House Committee on Agriculture on October 11, 2017 during which he discussed the agency's agenda for 2018. Highlights include the following:

- Enforcement: The Division of Enforcement's self-reporting program "signals the CFTC's determination to prosecute a broader range of misbehavior than would otherwise be uncovered without self-reporting by responsible parties."
- LabCFTC: To evolve with the use of digital technology in markets, the LabCFTC will serve as a platform to help the CFTC understand emerging technologies and facilitate financial technology (FinTech) innovation and competition.
- Cybersecurity: The CFTC is "constantly reviewing and updating our cybersecurity protections to guard against the growing threat of a breach" but recognizes the need to "carefully balance the agency's legitimate need to review market data and other information against unnecessarily holding proprietary trading information," that could make the agency a larger target for cybercriminals.
- Rule review: The agency-wide review of CFTC rules, regulations, and practices to make them simpler and less costly continues and the CFTC is working with other agencies to better harmonize and simplify rules, particularly where there is shared jurisdiction.
- Reforms: Giancarlo called for new and enhanced swaps reforms and a more flexible framework that would help attract global participants to U.S. markets, better align regulatory oversight with the swap market, and facilitate risk hedging activities.
- Swaps data reporting: "International regulators have not yet harmonized global reporting protocols and data fields across international jurisdictions." The CFTC is actively engaged in global swaps data harmonization efforts while

simultaneously looking to improve upon the current processes for swaps reporting. The agency is also co-leading several global initiatives to harmonize derivatives reporting, including unique transaction identifiers (UTIs), unique product identifiers (UPIs), and critical data elements (CDEs), along with fellow overseas regulators through the Committee on Payments and Infrastructures-International Organization of Securities Commissioners (CPMI-IOSCO) and the Financial Stability Board (FSB).

- CCPs and cross border coordination: There is a need for effective regulatory cooperation and coordination between the CFTC and the European Union, especially with respect to the supervision of major cross-border central counterparty (CCP) clearing houses, and the CFTC believes the EU must develop any new post-Brexit approach to supervision of cross-border CCPs in cooperation with the CFTC.
- De minimis threshold: Giancarlo stated that he would like a one-year delay to a change in the \$8 billion de minimis threshold for swap dealer registration, which is currently scheduled to change to \$3 billion at the end of 2018. Commissioner Brian Quintenz issued a separate statement after the hearing in which he said the \$3 billion threshold would bring "community banks and end-users who pose zero systemic risk" under CFTC regulation. Commissioner Rostin Behnam, however, stated that the delay would "prolong uncertainty for market participants and create market risk."

[\[Giancarlo testimony\]](#) [\[Quintenz statement\]](#) [\[Behnam statement\]](#)

### 3.3 SEC proposes rules to implement FAST Act

On October 11, 2017, the Securities and Exchange Commission (SEC) proposed amendments to the disclosure requirements in Regulation S-K and related rules and forms to implement a mandate under the Fixing America's Surface Transportation (FAST) Act. The proposed amendments are designed to simplify disclosure requirements for public companies, investment advisers, and investment companies. The proposed amendments would:

- Eliminate the risk factor examples listed in the disclosure requirement and revise the description of property requirement to emphasize the materiality threshold;
- Eliminate certain requirements for undertakings in registration statements;
- Simplify disclosures, including changes to exhibit filing requirements and the related process for confidential treatment requests;

- Allow for flexibility in discussing historical periods in management's discussion and analysis; and
- Require data tagging for items on the cover page of certain filings and hyperlinks for information that is incorporated by reference and available on EDGAR.

[\[Press Statement\]](#) [\[Proposed Rule\]](#)

### 3.4 Enforcement actions

The Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) announced the following enforcement actions.

- The CFTC issued an Order against a proprietary trading firm for engaging in "spoofing" in the copper futures contract traded on the Commodity Exchange, Inc. (COMEX) between March and August 2016. The Order requires the firm to pay a \$300,000 civil monetary penalty and to cease and desist from violating the Commodity Exchange Act's prohibition against spoofing.
- The CFTC filed a complaint in a U.S. District Court charging three individuals and a company with fraudulent solicitation, misappropriation of funds, and registration violations in connection with two separate commodity pools. The alleged fraud resulted in the taking of more than \$3.1 million from at least 72 pool participants.
- The SEC announced a whistleblower award of more than \$1 million to an individual that provided the agency with new information and corroborating documentation of a securities law violation by a registered entity.
- The SEC filed charges in a U.S. District Court charging two lawyers with helping to facilitate a microcap fraud scheme involving undisclosed "blank check" companies secretly bound for reverse mergers. The lawyers are alleged to have provided legal opinion letters falsely stating that the companies' shares were validly issued or free to be resold publicly. The U.S. Attorney's Office filed related criminal charges against one of the lawyers.
- The SEC filed charges against three individuals for defrauding investors in a company that made false claims about a product under development and its potential acquisition by a major company. The U.S. Attorney's Office also filed criminal charges against the three individuals.

## 4. Legislation

### 4.1 House Committee passes 22 bills legislation

On October 12, 2017, the House Committee on Financial Services approved 22 bills for consideration by the full House of Representatives. The bills affect an array of banking, investment, and consumer issues. Highlights include:

- H.R. 3072, Bureau of Consumer Financial Protection Examination and Reporting Threshold Act of 2017 - This bill would amend the Consumer Financial Protection Act of 2010 to raise the CFPB's supervisory examination and reporting thresholds for insured depository institutions or insured credit unions from \$10 billion or more in total assets to assets of \$50 billion or more.
- H.R. 3312, Systemic Risk Designation Improvement Act of 2017 - This act would amend the Dodd-Frank Act to remove the \$50 billion asset threshold for a systemically important financial institution (SIFI) designation. It would also authorize the Financial Stability Oversight Council to subject a bank holding company to enhanced supervision and prudential standards by the Federal Reserve Board if an institution has been identified as global systemically important bank (G-SIB) under the indicator-based measurement approach. The act would also substitute G-SIB status in place of the current monetary threshold as the determinant for the Federal Reserve's authority over

bank holding company acquisition restrictions, prohibitions on interlocks between management of different financial companies, and enhanced supervision and prudential standards.

- H.R. 3758, Senior Safe Act of 2017 - This act would provide that: (1) a supervisor, compliance officer, or legal advisor for a covered financial institution who has received training regarding the identification and reporting of the suspected exploitation of a senior citizen (at least 65 years old) shall not be liable for disclosing such exploitation to a covered agency if the individual made the disclosure in good faith and with reasonable care; and (2) a covered financial institution shall not be liable for such a disclosure by such an individual if the individual was employed by the institution at the time of the disclosure and the institution had provided such training.
- H.R. 3948, Protection of Source Code Act - This act would amend the Securities Act of 1933 to require the Securities and Exchange Commission (SEC) to issue a subpoena before compelling a person to produce algorithmic trading source code or similar intellectual property.

[\[Press Statement\]](#)

## 5. Cybersecurity

### 5.1 G-7 releases cyber security report

The finance ministers and central bank governors of the G-7 countries released the "Fundamental Elements for Effective Assessment of Cybersecurity for the Financial Sector" on October 13, 2017. This report advances the work of the earlier G-7 report, "Fundamental Elements of Cybersecurity for the Financial Sector," which was released last year. Though it is non-binding and non-prescriptive, the new report provide tools

for institutions to evaluate the performance and assessment of cybersecurity practices. Additionally, they detail a set of outcomes which demonstrate sound cybersecurity and process components for organizations to use when evaluating their cybersecurity.

[\[Treasury Press statement\]](#) [\[Assessment Report\]](#) [\[Elements Report\]](#)

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